IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.146 of 1995
Date of decision: 13.9.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

M/s Harpal Singh Jaswant Singh, Malout. Respondent.

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 18.1.1994 in ITA No.331(ASR)/1993, in respect of assessment year 1991-92:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal is justified in cancelling the penalty of Rs.3,14,955/- confirmed by the Commissioner of Income Tax (Appeals) out of Rs.3,36,255/- levied by the Deputy Commissioner of Income Tax under Section 271-D of the Income Tax Act, 1961?"

The assessing officer initiated proceedings under section 271D of the Income Tax Act, 1961 (for short, 'the Act') and levied penalty on the ground that the assessee had accepted loan/deposit of more than Rs.20,000/- otherwise than through account payee cheque. This was upheld by the CIT (A) with modification in the amount of penalty. On further appeal to the Tribunal, the penalty was set aside. The Tribunal held that the petitioner was a commission agent and as per circular No.556 dated 23.2.1990 issued by the Central Board of Direct Taxes reported as (1990) 183 ITR (Stt.) page 92, case of 'Kacha Arhatiyas" selling goods belonging to an agriculturist was not covered under Section 269T of the Act. Relevant part of the circular

is reproduced below:-

> "3. A number of references have been received by the Board seeking clarification whether the sale proceeds of agricultural commodities, left over by the agriculturists with their 'Kacha Arhatiyas', would also come within the ambit of deposit of any nature necessitating its repayment by an account payee cheque as provided under section 269T of the Act.
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> 4. The Board is of the opinion that where a "Kacha Arhtiya" sells goods belonging to an agriculturist, the sale proceeds thereof which remain with him cannot be regarded as a deposit made by the agriculturist with the "Kacha Arhatiyas". Further, where the Kacha Arhatiya remits only a part of the sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269T of the Act."

We have heard learned counsel for the revenue.

We find that view taken by the Tribunal was correct in law in view of circular of the CBDT. Even otherwise, the Tribunal held that the cash transaction was duly explained by the assessee. In **Assistant Director of Inspection (Investigation) v. Kum.A.B.Shanthi,** (2002) 255 ITR 258, it was held that if cash payment was on account of reasonable belief, penalty will not be justified. It was observed at Page 266:-

> "It is important to note that another provision, namely section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there as reasonable cause for such failure and if the

> assessee proves that there was reasonable cause for such failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B in the Act. If there was a genuine and bonafide transaction and if for any reason the tax payer could not get a loan or deposit by account-payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power."

In view of the above, the question is answered against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

September 13, 2006
'gs'

(Rajesh Bindal)
Judge